Although this case was decided upon the grounds of equitable estoppel, it could have been decided upon the grounds that the plaintiff had not fulfilled the requirements of the statute providing that all articles manufactured according to a granted patent must be marked as prescribed, and because the defendant had no notice of the patent.

A patent grants the right altogether to exclude everyone for the time prescribed in the statute from making, using, or vending the thing patented, without the permission of the patentee. *Bloomer* v. *McQuewan* (1852), 14 How. (U. S.) 539; *Continental Paper Bag Co.* v. *Eastern Paper Bag Co.* (1908), 210 U. S. 405.

It is a well settled principle that when one is in the employment of another in a certain line of work, and devises an improved method or instrument for doing that work, and uses the property of his employer and the services of other employees to develop and put in practicable form his invention, and explicitly assents to the use by his employer of such invention, he gives to such employer an irrevocable license to use such invention. *Solomons* v. *United States* (1890), 137 U. S. 342; *Gill* v. *United States* (1896), 160 U. S. 426; *Lane & Bodley Co.* v. *Locke* (1893), 150 U. S. 193. And also where the employee did not expressly assent, but allowed his employer to use, and incur great expense in installing his invention, he gave him an implied license to use the invention. *Schmidt* v. *Central Foundry Co.* (1914), 218 Fed. 466; *Barber* v. *National Carbon Co.* (1904), 129 Fed. 370, 5 L. R. A. (N. S.) 1154, 64 C. C. A. 40.

The assignee of a patent right takes it subject to the legal consequences of the previous acts of the patentee. *McClurg* v. *Kingsland* (1843), 1 How. (U. S.) 202.

Suit for infringement of a patent will be barred after a long delay before instituting. *Safety Car Heating Co.* v. *Consolidated Car Heating Co.* (1908), 160 Fed. 476. Such delay in instituting suit is aggravated by the fact that the plaintiff has permitted the defendant to expend a great amount of money for the improvement of his manufacturing plant for the production of the invention. *Woodmanse & Hewitt Mfg. Co.* v. *Williams* (1895), 68 Fed. 489, 15 C. C. A. 520. See also, *Thacher* v. *Board of Supervisors* (1916), 235 Fed. 724. Where the plaintiff threatened the defendant with infringement suit, but the infringement suit was delayed for several years, this amounted to an acquiescence in the copying of the patent until such suit was brought, but the defendant was enjoined from future copying. *Wolf* v. *U. S. Slicing Machine Co.* (1919), 261 Fed. 195. The plaintiff in this case was guilty of laches which prevented his recovery for past infringements, but unlike the instant case, the defendant had knowledge of the patent and the plaintiff's conduct was not deemed sufficient to estop him to deny that the defendant had any further right to use the invention.

A person may be guilty of laches sufficient to prevent him from recovering for past infringements but which will not estop or bar him from recovery of damages for future infringements. *Rajah Auto Supply Co.* v. *Belvidere Screw & Machine Co.* (1921), 275 Fed. 761.

PRINCIPAL AND SURETY—DISCHARGE OF SURETY—FAILURE TO PRESENT CLAIM AGAINST PRINCIPAL'S ESTATE.—The only defendant to answer signed a promissory note, at plaintiff's request, as joint maker with other defendants, but as surety only. She received no consideration therefor,

the note being given for a loan from plaintiff to defendant's husband and the other defendants. Prior to the commencement of this action the defendant's husband died intestate, leaving a large estate. While administrative proceedings were pending, an order was made limiting the time within which creditors might file claims against the estate and due notice of such order was given. The plaintiff failed to present the note as a claim against the estate, brought this action against defendants, including the surety for the deceased principal debtor. *Held,* plaintiff could recover. *Manchester Savings Bank* v. *Lynch et al.* (Minn. 1922), 186 N. W. 794.

In the instant case the court in terms overruled the holding in *Siebert* v. *Quesne* (1896), 65 Minn. 107, 67 N. W. 803, 60 Am. St. Rep. 441, where it was held that it is incumbent upon a creditor to present his claim against the estate of a deceased principal debtor, and if he fails to do so within the time allowed by law for the presentation and allowance of such claims, the surety is released as to any personal liability.

Upon facts nearly identical with the instant case the same holding is found in several cases. *Yerxa* v. *Ruthruff* (1909), 19 N. D. 13, 120 N. W. 758, Ann. Cas. 1912D, 811, 25 L. R. A. (N. S.) 139; *Baker et al.* v. *Gaines Bros. Co.* (Okl. 1917), 166 Pac. 159. This view is supported by the great weight of authority. See the note to *Davenport* v. *State Banking Co.* (1906), 126 Ga. 136, 54 S. E. 977, Am. St. Rep. 68, 86; 2 DANIEL, NEG. INST. (6th Ed.), § 1326; BRANDT, SURETYSHIP (3rd Ed.), § 508.

It was held that the laches of a government officer in not asserting a claim against the estate of a deceased principal debtor is not a bar to the assertion by the government of its rights against the sureties of such principal. *Gaussen* v. *United States* (1878), 97 U. S. 584. The doctrine was applied to a co-surety, and it was held that the neglect of an obligee to prosecute a claim against the estate of a deceased surety does not operate to release from liability a co-surety. *Clark* v. *Douglas* (1899), 58 Neb. 571, 79 N. W. 158.

A creditor owes no duty of active vigilance to the surety to enforce the collection of the indebtedness arising from the obligation, as the latter, at any time after default of the principal, is entitled to pay the debt and reimburse himself by enforcing it against the principal and his co-sureties. *Self Motor Co.* v. *First State Bank of Crowell et al.* (Tex. 1920), 226 S. W. 428. The mere delay of the payee of a note in not suing the principal makers, both of whom left the country, is not sufficient to discharge the defendant, who signed as surety for such makers; the payee having transferred the note to the plaintiff for value. *Green* v. *McCullar* (1917), 128 Ark. 221, 193 S. W. 505. Forbearance or mere passiveness on the part of a creditor will not release a surety. *Westchester Mortgage Co.* v. *Thos. B. McIntire, Inc., et al.* (1916), 174 App. Div. 525, 161 N. Y. S. 384.

A holding upon a set of facts similar to the facts in the instant case does not appear to have arisen in Virginia. However, it seems that Virginia would be bound to follow the majority view, since it is held in Virginia that the liability of a surety is the same as that of the principal, the creditor being under no obligation to first look to the principal before resorting to the surety. *Manson & Shell* v. *Rawlings' Ex'x* (1911), 112 Va. 384, 71 S. E. 564.